IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.930 OF 2003
IN
SUMMARY SUIT NO.3738 OF 2001

Sunil S. Devidasani Plaintiff

versus

Amar Bajaj and another Defendants

Mr.B.G.Wadhwa for plaintiff.

Mr.Birendra Saraf with S.Bangar i/by Meghraj & Co. for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd August 2005

PC :

1. Heard Mr.Wadhwa appearing for plaintiff and Mr.Saraf for defendants.

2. In a summary suit filed to recover amounts due and payable upon a Bill of Exchange (Exhibit-A), present Summons for Judgement is taken out.

3. It is contended by Mr.Wadhwa appearing for plaintiff that the plaintiff has advanced a sum of Rs.1.00 lakh to first defendant by cheque on

4th August 1997. He submits that in consideration of the same on 4th August 1997 a bill of exchange has been presented by first defendant. The said bill of exchange is drawn by the first defendant on the second defendant, who is his wife and she has accepted the same. He contends that the bill of exchange being a Negotiable Instrument, interest @ 18% p.a. is being claimed and the original claim of interest @ 20.4% p.a. is given up. He submits that payment was demanded from time to time and in pursuance thereof the first defendant has paid interest up to 3rd August 1999. He submits that the bill of exchange was dishonoured and an advocate's notice was addressed on 25th June 2001 calling upon the defendants to pay the amount of Rs.1.00 lakh along with accrued interest. Mr.Wadhwa submits that although there is a reply to the advocate's notice but in the said reply the contentions raised in the affidavit have not been raised at all. On the other hand, he states that in the said reply the defendant in para 3 denies that any demand was made for payment of the amount of Rs.1.00 lakh under the bill of exchange. The second contention in the reply to the suit notice is that on account of cordial relations existing between the parties the entire

dues payable under the bill of exchange in question has been paid in instalments. In other words, according to Mr.Wadhwa, it is not the case of the defendants that the bill of exchange has not been executed at all. He also invites my attention to the plea of limitation raised in reply to the suit notice.

4. Inviting my attention to various contentions raised in the affidavit in reply, Mr.Wadhwa urges that not only the payment of interest up to 3rd August 1999 by first defendant is reflected in documents but in the balance sheet the loan which is due and payable to the plaintiff, has been shown as outstanding. It is contended that for the purposes of Income Tax the amount has been shown as outstanding and payment of interest is also shown in the statement. Relying upon decision of this Court reported in 1982-Mh.L.J.-912 Mr.Wadhwa contends that this is a fit case where the Summons for Judgement be made absolute.

5. In any event, Mr.Wadhwa submits that in the light of the provisions of Limitation Act, the period would have to be computed afresh and merely because the suit is filed on 24th

September 2001, it cannot be said straight way that the claim is time barred. He, therefore, submits that defendants be put to terms.

6. Mr.Saraf appearing for defendants has taken me through affidavits filed in reply, rejoinder and sur-rejoinder. He has also taken me through the averments in the plaint. He submits that amongst various contentions raised, the issue of limitation is such as should entitle both, defendants 1 and 2 to unconditional leave. He submits that admittedly averments in the plaint show that the bill of exchange is dated 4th August 1997. Further, it is contended that demands were made on the Acceptor and one such demand is of 12th December 1997. He submits that the plaint lodged on 24th September 2001 is obviously after a period of three years from the date of demand. Ex-facie, therefore, the claim is time barred. In any event, relying upon payment of interest by first defendant it cannot be urged that the suit claim is within limitation insofar as both defendants are concerned. Elaborating this submission, he contends that merely because payment of interest is made by first defendant fresh period of limitation cannot be computed insofar as second defendant is

concerned, and therefore, the suit claim is time barred as against her. Mr.Saraf in support of these submissions has relied upon Sections 18, 19 and 20 of Limitation Act, 1963 and a decision of this Court reported in 2003(3)-BCR-781.

7. Mr.Saraf states that above submission is without prejudice to other contentions namely that no such bill of exchange was ever executed and/or signatures thereon are forged and fabricated. He submits that the defendants have termed the bill of exchange as purported bill of exchange in their reply to the suit notice thereby not admitting it's execution. In the light of all this material, he submits that this is a fit case for grant of unconditional leave to both defendants. He submits that whenever issues, such as non execution of Negotiable Instrument or that signatures thereon being fabricated or forged are raised, an order of unconditional leave must follow as it is impossible to adjudicate upon such issues in summary manner. To support this submission he relies upon decision reported in AIR-1982-Gujrat-115. Mr.Saraf states that the issue of the alleged presentation of bill of exchange is also raised inasmuch as it is denied

by the defendants that assuming without admitting that such a bill of exchange was ever executed, it was never presented and more particularly in the manner set out by Negotiable Instruments Act, 1881. He relied upon Chapter-V of the Negotiable Instruments Act in that behalf.

8. With the assistance of Mr.Wadhwa and Mr.Saraf I have gone through the averments in the plaint. I have perused annexures thereto. I have also perused with their able assistance affidavits placed on record.

9. The Bill of Exchange is dated 4th August 1997. The bill of exchange, upon a perusal thereof, clearly records that a sum of Rs.1.00 lakh was paid by cheque by the plaintiff to the first defendant. The bill of exchange also records that notice of dis-honour is waived. It also records that the first defendant is proprietor of one Mohan Brothers Tours and Travels. The bill of exchange is signed by first defendant after the name of the concern appears and his wife has also signed. The signatures are at two places. Notice dated 25th June 2001 addressed by the defendant for the plaintiff states that the bill of exchange has been

dis-honoured by non payment. The demand was made on 12th November 1997. It was stated clearly in the suit notice that financial difficulties have been pleaded by the sole proprietor (defendant no.1). The dis-honour of bill of exchange by the second defendant, according to plaintiff's advocate, was duly intimated to the first defendant. It is stated that despite repeated demands, the defendants have failed and neglected to pay the principal amount or the accrued interest. However, the notice record that the first defendant paid interest for the period up to 3rd August 1999. Assuming that this notice is replied on 3rd July 2001, although Mr.Wadhwa would dispute it, the said reply is eloquent enough. A copy of said letter is annexed to one of the affidavits in reply. In the letter, in para 2, the plea of limitation is raised. At the same time, it is denied that defendants have received any valuable consideration or any amount as due and payable under the bill of exchange. The bill of exchange is termed as purported bill of exchange. Thereafter, the actual transaction is sought to be placed on record. In para 3 of this notice this is what is stated :-

"3. With reference to paragraph 2 of

> your letter under reply our client denies that any demand was made by your client for the amount of Rs.1,00,000/- thus under the Bill of Exchange as alleged or at all. Our client denies any liabilities to pay any amount to your client, under the Bill of Exchange in question. Infact on account of the cordial relation that existed between our clients and your client, our clients have paid to your client the entire dues payable under the Bill of Exchange in question in instalment. However your clients did not pass any receipts in respect of the amounts received from our clients and in view of the cordial relation between our respective clients, our clients did not insist for any stamped receipts from your client having full trust and faith in your client. In the circumstances, there is no question of our clients pleading any financial difficulties as falsely sought to be alleged in your letter under reply. There is also no question of our client assuring or promising your client to pay interest at the rate of 20.4% p.a. on the outstanding amounts as falsely sought to be alleged by your notice under reply. Our clients deny that they have paid any amount towards any alleged interest as alleged. Our clients say that our clients never agreed to pay you any interest and whatever payments that were being made by our clients were towards principal amount and not towards interest as falsely alleged by your clients in the paragraph under reply."

10. In the affidavit now placed on record i.e. in June 2005 various contentions have been raised including that the bill of exchange was never executed or signed; that the signatures therein are fabricated and/or forged. The plea in this behalf is sought to be supported by report of writing expert. The other plea that is raised is

that the bill was never presented for payment. The payment of interest is also denied. In my view, all these pleas are raised as after thought and are clearly inconsistent with the stand taken in reply to the suit notice. That stand is reproduced by me. If the entire payment is made and no stamped receipt is insisted evidencing such payment on account of cordial relations between the parties, then other contentions as raised on affidavit, cannot be permitted to be raised now. Therefore, I do not wish to attach any importance to such statements on affidavit which have not been the stand taken earlier.

11. Now remains the issue of limitation. The plea in that behalf is that assuming without admitting that the bill of exchange dated 4th August 1997 was executed and demand was made in pursuance thereof on 12th November 1997, then the suit filed on 24th September 2001 is time barred. In my view, this plea is not open to be raised insofar as first defendant is concerned. He has by the documents annexed to the rejoinder affidavit clearly acknowledged that the amount was paid to him by cheque and that interest was paid by him by cheque. He has also shown the amount as outstanding in the Balance Sheet. He

has also shown this liability for Income Tax purposes. If the interest is paid till 3rd August 1999, then clearly Section 19 of the Limitation Act would come into play insofar as first defendant is concerned. That would come into play not just because of the payments but also because of the acknowledgements of liability. Therefore, it is not permissible insofar as first defendant is concerned to urge that the claim is time barred. Reliance placed on the decision of this Court reported in 2003(3)-BCR-781 cannot be of any assistance inasmuch as there all that was urged was that part payment was made by one of the defendants namely first defendant. In the case before me, not only is there acknowledgement of liability but there is payment of interest on account of debt. That insofar as the first defendant is concerned would attract both, Sections 18 and 19 of the Limitation Act.

12. Mr.Saraf places reliance upon Section 20(2) and states that this would not in any manner save the limitation insofar as second defendant is concerned. He states that the payment by first defendant on account of debt would not mean that fresh period of limitation must be computed from

the date of payment of interest insofar as second defendant is concerned. In other words, payment of interest by first defendant would not mean that a fresh period of limitation shall be computed from the said date insofar as second defendant is concerned. In my view, relying upon Section 20(2) and the judgement of learned Single Judge of this Court, a triable issue as far as limitation aspect is concerned is raised by the second defendant. Mr.Saraf no doubt contends that the learned Single Judge has granted unconditional leave in such circumstances to both defendants. However, before the learned Single Judge the plea of acknowledgement was not in issue. Here, both, acknowledgement and payment, are sought to be relied upon to save the bar of limitation or to support the plea that fresh period of limitation shall be computed. That acknowledgement can be said to be existing on the basis of statement in balance sheet is clear from a reading of Section 18 as also from perusal of judgement of this Court reported in 1982-Mh.L.J.-912. Therefore, it is not possible to accept contention that both defendants are entitled to unconditional leave.

13. In my view, in the light of the stand taken

by defendants in the suit notice, all that can be said as far as first defendant is concerned, that an opportunity can be given to him to substantiate the other pleas raised on affidavit but by imposing a condition that the first defendant shall deposit a sum of Rs.1.00 lakh in this Court within a period of eight weeks from today. On such deposit being made, the suit shall stand transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection.

14. Unconditional leave to defend is granted to the second defendant. Suit transferred to the list of commercial causes. Needless to add that in default of deposit within the stipulated period, further consequences in law would follow.

(S.C.DHARMADHIKARI, J.)